

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

KEITH STAFFORD, an individual,	)	
	)	2:04-cv-0047-GEB-EFB
Plaintiff,	)	
	)	<u>CLARIFICATION RULING</u>
v.	)	
	)	
UNITED TREASURES, INC., a	)	
Washington corporation,	)	
	)	
Defendant.	)	
_____	)	

This filing provides the parties with clarification of the Order filed September 14, 2006.

Notice Instruction

The "Notice instruction" is unnecessary in light of Plaintiff's contention that "the notice given to Defendant's counsel constituted substantial performance of notice required by contract," and the parties' agreement that a substantial performance instruction will be given. (Order, Sept. 14, 2006, at 1.) Therefore, the version of the "notice" instruction included as No. 34 in the tentative instructions filed September 23, 2005, is deleted. The ruling on this issue in the September 23 filing is withdrawn because it reached an issue that did not have to be decided.

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Instruction No. 3

The following sentence in the parties' Proposed Instruction No. 3, which the parties filed September 9, 2005, will not be included in the final instructions because a judge is not required to tell the jury in the instructions to answer a specific question on the verdict form: "Please answer the following question on the jury verdict form: Do you find that the defendant intentionally used the trademark knowing it was an infringement?"

Instructions Nos. 9 and 10

The agreement the parties have reached on Instructions Nos. 9 and 10 is appreciated, and clarifies what is at issue.

Instruction No. 12

The parties have agreed that Instruction No. 21 in the September 23 filing should "be given as written, without any reference to the specific amount being requested by Plaintiff." (Parties' Joint Response, Sept. 18, 2006, at 4.)

Double Recovery

Plaintiff's position on the double recovery issue will be adopted. Therefore Instruction No. 27 in the September 23 filing is deleted.

JOINT PROPOSAL

The parties state they will jointly make changes to the Instructions and Verdict Forms. The parties are requested to ensure that the instructions they submit state the "rules and principles in simple, everyday, nonlegalistic language" to the extent this is feasible. Native American Arts, Inc. v. The Waldron Corp., 399 F.3d 871, 875 (7th Cir. 2005). If a party opines that any instruction is legally incorrect, that party shall file a written objection to the

1 instruction(s) no later than October 5, 2006, in which the party  
2 identifies the instruction(s) by number, the authority supporting the  
3 party's position, any requested change(s), and precisely where within  
4 the instruction(s) the revision(s) should be placed. If the opposing  
5 party's response is not filed at the same time it shall be filed no  
6 later than October 17, 2006.

7 Dated: September 19, 2006

8  
9 /s/ Garland E. Burrell, Jr.  
10 GARLAND E. BURRELL, JR.  
11 United States District Judge  
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